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In the

Supreme Court of the United States

OCTOBER TERM, 1959

No. 502

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,
Petitioner,

v.

ROSA LEE ROOSTH,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The Lincoln National Life Insurance Company, a corporation, your Petitioner, prays that Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on July 30, 1959.

OPINIONS BELOW

This cause having been submitted to a jury, after the Petitioner had moved the Court to withdraw the case from the jury and to direct a verdict in favor of the Peti-

tioner on the ground that the evidence was so uncontroverted as to raise no jury issue, and the jury having failed to agree upon a verdict, the Petitioner, pursuant to Rule 50b of the Federal Rules of Civil Procedure, filed a motion that judgment be entered in its favor in accordance with its previous motion for a directed verdict. After having received briefs from both parties, and after having heard oral argument respecting said motion for judgment, the Trial Court concluded that such motion was well taken and ordered that judgment be entered in favor of the Petitioner. In announcing such decision, the Trial Judge made certain comments expressing his opinion concerning the cause, which constitute a part of the record herein (R. 759-761). Such opinion is reproduced herein as Appedix A.

The Majority Opinion of the United States Court of Appeals for the Fifth Circuit is reported in *Vol. 269 Fed. 2d 171*, and same is attached hereto as Appendix B. The Dissenting Opinion of Chief Judge Hutcheson of said Court of Appeals is reported in *Vol. 269 Fed. 2d 180*, and same is attached hereto as Appendix C.

JUDGMENT SOUGHT TO BE REVIEWED

In accordance with the Majority Opinion of the Court of Appeals in this cause, judgment was entered on July 30, 1959, a copy of which is attached hereto as Appendix D, ordering that the judgment of the District Court be reversed and the cause be remanded to the District Court for another trial, "Hutcheson, Chief Judge, Dissenting." (R. 785.)

Thereafter, in due course, Petitioner filed in said Court of Appeals its Petition for Rehearing (R. 786) and brief in support thereof (R. 792). Thereupon, an order was entered by the Court of Appeals on September 4, 1959, wherein said Petition for Rehearing was denied, "Hutcheson, Chief Judge, Dissenting." (R. 832.) A copy of said order is attached hereto as Appendix E.

Pursuant to application of the Petitioner, an order was entered in the Court of Appeals on September 28, 1959 (R. 838), whereby it was decreed that issuance of mandate in said cause be stayed until final disposition of this cause by the Supreme Court of the United States, provided that within thirty days from date of said order the Clerk of the Supreme Court shall certify to the Clerk of the Court of Appeals that Petition for Certiorari and the record in this cause have been filed in the Supreme Court (R. 838).

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of *Title 28, U. S. C. A., Par. 1254(1).*